



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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October 24, 2012

JUSTIN KOVER  
522 LILLY RD NE #752  
OLYMPIA WA 98506

Subject: Complaint filed against 2011 Stephen Buxbaum Campaign for Mayor of Olympia –  
PDC Case #12-146

Dear Mr. Kover:

The Public Disclosure Commission (PDC) has completed its investigation of your complaint, received on September 30, 2011, alleging that the 2011 Stephen Buxbaum campaign under-reported the fair market value of printing services reported as in-kind contributions from Jim Lazar and Karen Messmer, alleged violations of RCW 42.17.080 and .090. Your complaint further alleged that the in-kind contributions attributed to Karen Messmer in Mr. Buxbaum's reports were in fact made by Jim Lazar, an alleged violation of RCW 42.17.120 by the Buxbaum campaign by concealing the true source of contributions received. Finally, your complaint alleged that the true fair market value of in-kind contributions from Mr. Lazar exceeded the \$800 per-election contribution limit in municipal races in 2011, an alleged violation of RCW 42.17.640. Finally, although your complaint also alleged that reported in-kind contributions from Microdesign Northwest were incorrectly valued, we noted that the 2011 Stephen Buxbaum campaign did not attribute any contributions to Microdesign Northwest in its reports, and we therefore did not investigate this allegation.

Your complaint was considered in light of the following statutes, rules, and declaratory order:

**RCW 42.17.020(11)**<sup>1</sup> defines "commercial advertiser" as any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public, whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

**PDC Declaratory Order 9, *A Printing Company is a Commercial Advertiser***, states that the term "commercial advertiser," as contemplated by the statute, "is meant to include any person who sells the service of communicating a message or producing printed material [including] a printing company that produces written material for which the company is being compensated."

<sup>1</sup> Effective January 1, 2012, RCW 42.17.020 was recodified as RCW 42.17A.005, RCW 42.17.080 and RCW 42.17.090 as RCW 42.17A.235 and RCW 42.17.240, respectively, RCW 42.17.640 as RCW 42.17A.405, and RCW 42.17.120 as RCW 42.17A.435.

The Order states that *"it is the act of selling the service of producing...printed material that makes [a] print shop [a] commercial advertiser."*

**RCW 42.17.020(13)(a)** defines "contribution" to include *"anything of value, including personal and professional services for less than full consideration."* The definition excludes "Volunteer services," i.e., services or labor for which the individual is not compensated by any person.

**WAC 390-17-405, Volunteer Services**, states that an individual may perform services or labor for a candidate or political committee without incurring a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include the production of advertising, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service.

**RCW 42.17.080 and .090** require candidates to file timely, accurate reports of contributions and expenditures, including in-kind contributions.

**WAC 390-16-207** requires a candidate or political committee that receives in-kind contributions valued over \$50 in the aggregate from one source to disclose the fair market value of the contributions. Items or services that do not constitute contributions under RCW 42.17A.005 or WAC 390-17-405 are not required to be disclosed.

**WAC 390-05-235** defines "Fair market value" and "value" as *"the amount in cash which a well-informed buyer or lessee, willing but not obligated to buy or lease that property, would pay, and which a well-informed seller, or lessor, willing but not obligated to sell or lease it, would accept, taking into consideration all uses to which the property is adapted and might in reason be applied."*

**RCW 42.17.640** limits contributions to candidates in mayoral races to \$800 for each election in which the candidate is on the ballot, or appears as a write-in candidate.

**RCW 42.17.120** states that no contribution shall be made, and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

PDC staff reviewed your complaint, reports and data filed by the 2011 Stephen Buxbaum campaign, and Mr. Buxbaum's formal response to the complaint. Staff also conducted interviews under oath with Jim Lazar and Karen Messmer. As a result of our review, we found the following:

- Stephen Buxbaum stated that the value of Jim Lazar and Karen Messmer's in-kind contributions to his 2011 campaign was communicated in emails sent at the time of the contributions; he provided copies of the relevant emails, which reflected the values disclosed in his C-4 filings.

- In alleging that Mr. Buxbaum under-valued in-kind contributions of printing, you assert that the true fair market value of the contributions is the amount that would be charged by a copy shop, professional printer, or commercial printing company for approximately equal services. If the printing in this instance had been performed by a commercial printer at no cost to the Buxbaum campaign, it is correct that the value of the printer's contribution would be the commercial rate for equivalent services, including the cost of all materials and labor, the printer's standard markup, and sales tax. However, in your complaint, you provided no evidence that the relevant contributions had the same value as commercial printing services.
- Jim Lazar is a consulting economist in the field of electric utility regulation. He provides regulatory assistance to public agencies and private non-profits. None of Mr. Lazar's services to his consulting clients include commercial printing.
- Mr. Lazar sometimes uses his office printer to produce printing for candidates, political committees, and non-profit organizations that he supports. On occasion, a candidate or political committee has reimbursed Mr. Lazar for all or part of his actual cost to produce the printed material. However, Mr. Lazar more frequently donates printing to campaigns, and the printing is reported by the campaigns as an in-kind contribution.
- No evidence was provided or found that in using his office printer to support the candidates and committees he favors, Mr. Lazar acted in a manner that made him a commercial advertiser, as discussed in PDC Declaratory Order 9. In occasionally accepting reimbursement for costs, Mr. Lazar is not "*selling the service...of producing printed materials*" to the candidates and committees he supports.
- Rather, beyond the cost of the printing that Mr. Lazar contributes to a campaign (or less frequently, that is reimbursed by the campaign), his printing services meet the definition of volunteer services described in WAC 390-17-405. As discussed above, a commercial printer, which *sells* the service of producing printed material, and *is ordinarily compensated* for that service, may not produce printed material for a campaign without those services creating a reportable expense or in-kind contribution for the campaign.
- Mr. Lazar stated to PDC staff that the value of his in-kind contributions reported by the Buxbaum campaign was the estimate he provided to the campaign, based on his cost to produce the printed materials. He stated that this value included his actual cost for materials (e.g., paper and ink, purchased retail) and a small amount, pennies per piece, to account for the use of his printing equipment. In your complaint, you provided no evidence that these estimated values were inaccurate, or that the total value of Mr. Lazar's contributions exceeded \$800 per election.
- Finally, Karen Messmer stated to PDC staff that all costs associated with her in-kind contributions to the Buxbaum campaign were borne solely by her. She stated that she paid with personal funds for the paper and toner used, and that the printing equipment was her own.

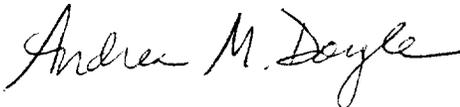
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After a careful review of the alleged violations and relevant facts, we have concluded our investigation. The investigation revealed no evidence of material violations or substantial non-compliance with any of the laws or regulations under the Commission's jurisdiction. Therefore, I am dismissing your complaint against the 2011 Stephen Buxbaum Campaign with the concurrence of the Chair of the Public Disclosure Commission.

Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will contribute to better awareness of the Public Disclosure Law and better public disclosure of important campaign information.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll-free at 1-877-601-2828 or by e-mail at [phil.stutzman@pdc.wa.gov](mailto:phil.stutzman@pdc.wa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Andrea M. Doyle".

Andrea McNamara Doyle  
Executive Director

c: Stephen Buxbaum

MEMO TO FILE

To: Barry Sehlin, Chair, Public Disclosure Commission  
From: Phil Stutzman, Director of Compliance  
Date: October 24, 2012  
Subject: Dismissal Letter

I have attached one dismissal letter for your review. Andrea has approved the letter. If you concur with staff's recommendation to dismiss this case, please indicate your approval by phone, email, or fax. If you have questions, please let me or Andrea know. Thank you.

PDC Telephone: (360) 753-1111  
Phil's Direct Line: (360) 664-8853  
Andrea's Direct Line: (360) 664-2735  
PDC Fax (360) 753-1112

<u>Name</u>	<u>Case Number</u>
Stephen Bauxbaum	12-146